

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TAMI ANDERSON,

Plaintiff,

vs.

PROFESSIONAL BUREAU OF
COLLECTIONS OF MARYLAND,

Defendant.

NO. CV-11-00421-JLQ

ORDER RE: DEFENDANT'S
MOTION TO DISMISS

BEFORE THE COURT is Defendant's Motion to Dismiss (ECF No. 4) brought pursuant to Fed.R.Civ.P. 12(b)(6) alleging that Plaintiff has failed to state a claim under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 et. seq. Plaintiff has filed a Response (ECF No. 8), and the motion was submitted without oral argument.

Defendant argues that as the FDCPA provides for a one-year statute of limitations under § 1692k, and the Complaint fails to allege any dates, then the Complaint fails to state a claim that occurred during the limitations period. Defendant further contends that the Complaint fails to plead "any intent to annoy, abuse, or harass the Defendant." (ECF No. 5, p. 4).

Plaintiff responds that she has sufficiently pled intent, and that the FDCPA is a strict liability statute and she need not plead intent. (ECF No. 8, p. 4). Secondly, she argues that Defendant has not properly raised the statute of limitations defense. (ECF No. 8, p. 12-13).

I. Pleading of Intent

Defendant's argument that Plaintiff has failed to plead intent is not well-taken. Plaintiff alleges that she received numerous phone calls, "several times per day, several days per week," seeking to collect a debt. Plaintiff further alleges that there were threats

1 to garnish wages and file a lawsuit. Plaintiff pleads that the "natural consequence" of
2 Defendant's actions was to "harass, oppress, or abuse." A jury could reasonably infer an
3 intent to annoy or harass Plaintiff given the allegation of numerous phone calls, some
4 containing threats, and the allegation that the natural consequence of those calls was to
5 harass. Additionally, Plaintiff alleges in part that Defendant violated § 1692(e) of the
6 FDCPA. (See Complaint, ECF No. 1, ¶ 16). The Ninth Circuit addressed, in *Clark v.*
7 *Capital Credit & Collection Services*, 460 F.3d 1162 (2006), as an issue of first
8 impression, "whether a violation of § 1692(e) may be predicated upon conduct that is
9 neither knowing nor intentional." *Id.* at 1174. The Ninth Circuit answered in the
10 affirmative and stated that the question of intent is "only relevant to the determination of
11 damages." *Id.* at 1176. Accordingly, the court rejects Defendant's argument that Plaintiff
12 has not sufficiently pled intent.

13 **II. Statute of Limitations**

14 The Defendant argues that because Plaintiff has failed to plead any dates in her
15 Complaint, "the complaint does not allege a claim within the statute of limitations."
16 (ECF No. 5, p. 3). The FDCPA contains a one-year period of limitation. 15 U.S.C. §
17 1692k(d). Interestingly, Plaintiff has responded by filing a 17-page memorandum
18 devoted in part to why she should not be required to plead any dates--rather than simply
19 offering the dates. It seems an odd strategy to file a memorandum which is three times
20 the length of the Complaint, rather than offering to add a few words or sentences to
21 remedy the deficiency.

22 Plaintiff asserts that she need not plead dates, and that it is improper to raise
23 statute of limitations via a Fed.R.Civ.P. 12(b)(6) motion, unless it is apparent from the
24 face of the complaint that the claim is time-barred. The defense is not apparent because
25 Plaintiff failed to plead any dates. Plaintiff argues she need only plead "a short and plain
26 statement of the claim showing that the pleader is entitled to relief." Fed.R.Civ.P.
27 8(a)(2). By failing to plead any dates, she has not effectively demonstrated she is
28 entitled to relief, as she would not be entitled to relief if the claim accrued outside the

1 statute of limitations. Although statute of limitations is clearly an affirmative defense
2 (Fed.R.Civ.P. 8(c)) on which Defendant will bear the burden of proof, Plaintiff has failed
3 to even plead that the claim occurred within the statutory period. This pleading
4 deficiency can be easily cured as to the date of the alleged actions by the Defendant.

5 Under Fed.R.Civ.P. 11, an attorney presenting a claim represents to the court that
6 the claim is warranted by existing law, and that the factual contentions have evidentiary
7 support. The court presumes that Plaintiff was aware of the approximate dates of the
8 alleged occurrences prior to filing the Complaint, and was aware of the applicable statute
9 of limitations. Thus, adding the approximate dates to the Complaint is not a burden for
10 the Plaintiff.

11 **III. Motion for More Definite Statement**

12 Although the court does not agree that Plaintiff's Complaint should be dismissed
13 for failure to state a claim, the court alternatively construes the motion as one for more
14 definite statement under Fed.R.Civ.P. 12(e). The court finds that the failure to plead the
15 approximate dates of the alleged collection actions renders the Complaint "so vague and
16 ambiguous that the party [Defendant] cannot reasonably prepare a response." This
17 information should easily be in the possession of Plaintiff, and the court will not
18 countenance a strategic failure to plead the dates. Accordingly, Plaintiff shall file an
19 amended pleading or statement addressing these deficiencies.

20 The court also observes that in her Response, Plaintiff relied on and referenced the
21 fact that she had filed a "verified complaint." In fact, the Complaint (ECF No. 1) is not
22 verified. The verification, contained at ECF No. 1, p. 5, is not signed or dated by the
23 Plaintiff.

24 **IT IS HEREBY ORDERED:**

25 1. Defendant's Motion to Dismiss (ECF No. 4) is **DENIED IN PART AND**
26 **GRANTED IN PART.** The Motion is denied to the extent it seeks dismissal of the
27 action for failure to state a claim, but granted to the extent it seeks a more definite
28 statement as to the dates of the allegations in the Complaint.

